



December 5, 2001

Ms. Daphna Eichenlaub
Records Management Specialist
Spring Branch I.S.D.
1051 ½ Witte Road, Building C
Houston, Texas 77055

OR2001-5652

Dear Ms. Eichenlaub:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155649.

The Spring Branch Independent School District (the "district") received a written request for a list of graduates from Northbrook High School from 1988 to 2001, including the students' name, sex, address, and telephone number. You state that the district does not maintain the requested information in the form requested, but rather only within individual students' transcripts and print-outs from 1994 to 2000, which contain additional information not within the scope of the request. You inquire as to the extent and manner in which the requested information may be released without violating the students' privacy interests.

We note at the outset that the district received the records request on August 22, 2001, but you did not request a decision from this office until September 28, 2001. Section 552.301(a) of the Government Code requires a governmental body to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold unless there has been a previous determination that the requested information is excepted from required public disclosure. Consequently, you did not request a decision from this office in a timely manner. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. Gov't Code § 552.302; *see also Hancock*, 797 S.W.2d at 381.

A compelling reason for withholding information is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Records Decision No. 150 (1977). You suggest that some of the information contained in the student transcripts implicates the privacy interests of students and is made confidential by laws outside the Public Information Act. We therefore will consider the extent to which the information at issue must be released to the requestor.

As noted above, you state that the district does not maintain the requested information in the form of a list. *See* Open Records Decision No. 145 (1976) (governmental body not required to prepare information in form requested by member of public). The Public Information Act applies only to information already transcribed into tangible form. On the other hand, it is incumbent on the district to make a good faith effort to relate information it holds to information that is being requested under the Public Information Act. *See* Open Records Decision No. 87 (1975). Based on your representation that the district maintains the requested information only in student transcripts and certain print-outs, we will address the extent to which the transcripts must be released to the requestor.

Section 552.026 of the Government Code provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

The Family Educational Rights and Privacy Act of 1974 ("FERPA") provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain numerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent.¹ *See* 20 U.S.C. § 1232g(b)(1). When a student has attained the age of eighteen years or is attending an institution of postsecondary education, the student holds the rights accorded by Congress to authorize the inspection of these records. 20 U.S.C. § 1232g(d).

"Education records" is defined as those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. 20 U.S.C. § 1232g(a)(4)(A). For purposes of FERPA, the individual student transcripts constitute "education records" in that they contain information about identifiable students. On the other hand, an educational institution or agency must

¹In Open Records Decision No. 634 (1995), this office concluded that an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions.

release "directory information" to the public if the educational institution or agency has designated the information as such in compliance with certain procedures and the appropriate individual authorizes such release. *See* 20 U.S.C. § 1232g(b)(1), (d). Section 1232g(a)(5)(B) provides as follows:

Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

FERPA gives the following examples of directory information: "the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student." *Id.* § 1232g(a)(5)(A). To the extent that the district has designated the requested information as "directory information" in accordance with section 1232g(a)(5)(B) and has received proper authorization for release of the information, we conclude that the district must release that information to the requestor. If the district has not received authorization for the release of the requested information, or if the district cannot verify that such authorization has been granted, the district must withhold the requested information with regard to those respective students.

Although you did not submit a sample of the transcripts or print-outs containing the requested information, you describe the transcripts and print-outs as also containing non-directory information such as academic information, social security numbers, and ethnicity information. As noted above, the district is prohibited from releasing student information unless specifically authorized to do so. Accordingly, we conclude that the district must withhold all non-directory information contained in the student transcripts. The directory information contained in the transcripts must be released to the requestor, but only if the district has obtained proper authorization from the student or the student's parent.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

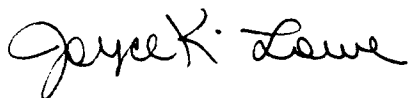
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/RWP/sdk

Ref: ID# 155649

c: Ms. Khalilah Williams
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